



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

4044

D-179447

October 29, 1973

General Engineering Company, Incorporated  
Post Office Box 5305  
Boise, Idaho 83705

Attention: Mr. Frank Galey, Jr.  
Secretary

Gentlemen:

Reference is made to your letter of August 7, 1973, with attachments, protesting the award of a contract to A & J Construction Company, Incorporated, under invitation for bids (IFB) B4-73-51, issued by the United States Forest Service, Ogden, Utah.

The subject IFB solicited bids for construction work at the Redfish Lake Sewage System, Sawtooth National Forest, Custer, County, Idaho. The schedule of items set forth the Government's estimated quantity for each item, and provided for the insertion by the bidder of a unit price and extended price for each item.

Bid opening on July 2, 1973, revealed A & J to be the low bidder at an aggregate bid price of \$990,531.76, followed by your bid price of \$1,031,211.18. With regard to item 02611, Section IX, designated as "Crushed Aggregate Surfacing Grading 'F'," A & J quoted a unit price of \$260.00, for an estimated 1144 tons. A & J's extended price was \$2,974.40.

Upon being requested to verify its price for this item, and to re-examine its bid to ascertain whether any other error had been committed, A & J replied by telegram of July 3, 1973, that the correct unit price for item 02611 of Schedule II was \$2.60; that all other items had been checked and verified; and that the correct total bid price remained unchanged at \$990,531.76. A & J's bid was administratively corrected to reflect a \$2.60 unit price for the subject item and a contract was awarded.

By telegram of July 16, 1973, and letter of July 17, 1973, you submitted your formal protest against an award to the contracting officer. The contracting officer denied your protest in a letter dated July 30, 1973, and you subsequently protested to our Office.

[Protest Against Construction Contract Award]

~~718444~~ 091802

B-179447

You refer to the language set forth on page 8 of the Schedule of Items, stipulating that bids will be evaluated on the basis of the unit prices quoted, times the estimated quantities shown, as correctly extended and totaled. In view of this provision, you argue that A & J's bid should have been properly evaluated by multiplying the estimated 1144 tons by the stated unit price of \$260 for an extended total amount of \$297,440.00 for that item, with the result that A & J's total price for all items would no longer constitute the low bid. In the alternative, you contend that A & J's bid must be rejected as nonresponsive due to an ambiguity in its unit price for the subject item.

You also contend that A & J's bid was unbalanced and should have therefore been rejected as nonresponsive. In this connection, you point out that although several items call for identical or similar work the unit prices for the respective items are quite disparate.

Finally, you contend that A & J's past performance on specified projects was deficient, thereby requiring a negative determination with regard to A & J's ability to perform the subject contract.

The record shows that the correction in A & J's unit price was made pursuant to Federal Procurement Regulations (FPR) 1-2.406-2, which provides that any clerical mistake, apparent on the face of a bid, may be corrected by the contracting officer prior to award, if the contracting officer has first obtained from the bidder verification of the bid actually intended. The regulation cites as an example of an apparent clerical error the obvious misplacement of a decimal point.

In the instant case, the extended price of the subject item was \$2,974.40, which divided by 1144 tons results in a unit price of \$2.60 rather than \$260.00. A unit price of \$260.00 would yield an extended price 100 times that stated in A & J's bid. Furthermore, a review of the abstract of bids also indicates an obvious error in the unit price rather than in the extended price. The other two bidders submitting quotes on this item for Section II submitted unit prices of \$5.50 and \$8.75. For the same item in Section I, the unit prices were \$5.50, \$8.75 and \$19.80, and A & J's unit price was \$5.25. Therefore, it is our view that the contracting officer properly concluded that there was an apparent clerical error in A & J's unit price in the form of a misplaced decimal point within the purview of FPR 1-2.406-2, and corrected the error.

B-179447

Not only has our Office sanctioned the correction of apparent clerical errors in unit prices, but we have also held that provisions in solicitations providing for the evaluation of bids on the basis of unit prices correctly extended are not applicable where the circumstances indicate that the unit price itself is in error. B-164453, July 16, 1968. Accordingly, such extensions must be made on the basis of the corrected unit price when the error in the unit price is obvious. B-164453, supra.

We agree with your contention that A & J's unit prices for some items involving identical or similar work appear to be unbalanced. In this regard, the record shows that A & J was requested to re-examine its bid and notify the contracting agency of any error in addition to the one suspected in item 02611. A & J subsequently verified that its bid was otherwise correct.

The fact that a bid may be unbalanced does not render it non-responsive, nor does such factor of itself invalidate an award of a contract to such bidder. Therefore, in cases where, as here, a bidder has confirmed a bid which appears to be unbalanced, absent any indication that the bid was not as intended, we have held that the bid may be accepted if it is otherwise the lowest acceptable bid and the bidder is responsible. B-175928, August 2, 1973.

With regard to A & J's past performance, the procuring activity contacted a number of sources, including those set forth in your letter of July 17, 1973. The record shows that both favorable and unfavorable replies were received. After obtaining this information, it was nevertheless determined on July 30, 1973, that an award would be made to A & J, and A & J was so notified by letter of that date.

A bidder's past performance is a matter of responsibility which is to be determined by the contracting officer and necessarily involves the exercise of discretion. Our Office will not substitute its judgment for that of the contracting officer, unless it is shown by convincing evidence that his determination was arbitrary or not based on substantial evidence. 45 Comp. Gen. 4, 6, 7 (1965). While there is some evidence in the record of A & J's unsatisfactory past performance on some projects, there is also considerable evidence of satisfactory performance on other projects. Therefore, we are unable to conclude that the contracting officer abused his discretion in determining A & J responsible.

B-179447 .

Accordingly, your protest is denied.

Sincerely yours,

Paul G. Dambling

For the Comptroller General  
of the United States